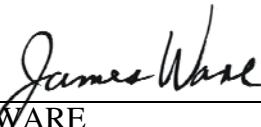


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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9 SAN JOSE DIVISION  
10 Data Capital Corporation, NO. C 08-00678 JW  
11 Plaintiff,  
v.  
12 Safedesk Solutions, Inc., et al.,  
13 Defendants.  
14 \_\_\_\_\_ /  
15 On February 4, 2008, Defendants filed a motion to dismiss Plaintiff's Complaint, and noticed  
16 the motion for a hearing on April 7, 2008. (See Docket Item No. 9.) On March 13, 2008, Plaintiff  
17 filed a First Amended Complaint. (See Docket Item No. 14.)

18 Rule 15(a) provides that a party may amend its pleading once as a matter of course at any  
19 time before a responsive pleading is served. A motion to dismiss is not a responsive pleading within  
20 the meaning of Rule 15(a). Fed. R. Civ. P. 15(a); Allwaste, Inc. v. Hecht, 65 F.3d 1523, 1530 (9th  
21 Cir. 1995).

22 Accordingly, Defendants' motion to dismiss is denied as moot. The April 7, 2008 hearing on  
23 the motion is VACATED.

24  
25 Dated: March 27, 2008  
26  
27  
28

  
JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Clifford Eric Yin, cey@cpdb.com  
3 Julian A. Pollok, [julianpollok@sbcglobal.net](mailto:julianpollok@sbcglobal.net)

4 **Dated: March 27, 2008**

**Richard W. Wieking, Clerk**

5 By: /s/ JW Chambers

6 Elizabeth Garcia  
7 Courtroom Deputy